DJZ

266 NLRB No. 184

D--9925
San Diego, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THRIFTY OIL COMPANY

and

Case 21--CA--21918

AUTOMOTIVE AND ALLIED INDUSTRY
EMPLOYEES OF SAN DIEGO COUNTY,
TEAMSTERS LOCAL 481, AFFILIATED
WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on 24 January 1983 by Automotive and Allied Industry Employees of San Diego County, Teamsters Local 481, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Thrifty Oil Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on 15 February 1983 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 10 December 1982, following a Board election in Case 21--RC--16913, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about 14 December 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse to furnish the Union with requested information relating to the names, rates of pay, classifications, work locations, benefits, and plans or rules for benefits, which is necessary for, and relevant to, the performance of its function as the exclusive collective-bargaining representative of the employees in the appropriate unit. The complaint further alleges that, since on or about 26 January 1983, Respondent has refused, and continues to date to refuse, to recognize and bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 25 February 1983 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 23 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment.

---

[1] Official notice is taken of the record in the representation proceeding, Case 21--RC--16913, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Subsequently, on 30 March 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits that it has refused to furnish information requested by the Union, and that it has refused to recognize and bargain with the Union, but denies that it committed the unfair labor practices alleged and requests that the complaint be dismissed in its entirety. In its answer to the Notice To Show Cause, Respondent reiterates its admission that it has refused to recognize and bargain with the Union, or to provide the Union with the requested information, and further asserts that its refusal is based upon the Union's having been improperly certified. Respondent attacks the validity of the Union's certification on the grounds that the Board erred in overruling its objections to the election in the underlying representation case. The General Counsel, on the other hand, asserts that no issues are raised which would warrant a hearing before the Board, that Respondent improperly seeks to relitigate

issues which were raised and decided in the representation case, and that summary judgment is appropriate. We agree with the General Counsel.

A review of the record, including that of the representation proceeding, Case 21--RC--16913, indicates that the Union won the election conducted on 12 March 1982 pursuant to a Stipulation for Certification Upon Consent Election. The Employer, Respondent herein, filed timely objections to the conduct of the election and to conduct affecting the results of the election alleging, in substance, that (1) supervisors had improperly solicited authorization cards and campaigned on behalf of the Union, (2) the Union had made material misrepresentations to the employees, and (3) the Board agent had failed to require adequate identification of voters.

The Regional Director directed a hearing to resolve the issues raised by the Employer's objections and on 9 June 1982 the Hearing Officer issued his report and recommendations in which he concluded that all objections should be overruled and the Union certified. Timely exceptions to the Hearing Officer's report were filed by the Employer, who contended that the Hearing Officer's findings, conclusions, and recommendations should be reversed, and the election set aside. On 10 December 1982 the Board, after reviewing the record in the light of the Employer's exceptions, adopted the Hearing Officer's findings and recommendations and certified the Union.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a

respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a California corporation engaged in the retail sale of petroleum and other products. During the past 12-month period, it has received gross revenues in excess of $500,000, and, during the same period of time, has purchased and received goods valued in excess of $5,000 [3] directly from suppliers located outside the State of California.

---

[2] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[3] We note that, although the complaint alleges that Respondent purchased and received goods valued in (continued)

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Automotive and Allied Industry Employees of San Diego County, Teamsters Local 481, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All gasoline station attendants at the Company's gasoline stations in San Diego County, California; excluding all food store employees, office clerical employees, guards and supervisors as defined in the Act, as amended.

---

[3] excess of $5,000 directly from suppliers located outside the State of California, the parties stipulated in the underlying representation proceeding that during the past calendar year Respondent purchased goods valued in excess of $50,000 directly from points outside the State of California. Whether the correct amount is $5,000 or $50,000, it is clear that Respondent meets the Board's monetary standard for a retail enterprise, that the Board's statutory jurisdiction is established, and that the Board, as Respondent admits, has jurisdiction.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Automotive and Allied Industry Employees of San Diego County, Teamsters Local 481, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All gasoline station attendants at the Company's gasoline stations in San Diego County, California; excluding all food store employees, office clerical employees, guards and supervisors as defined in the Act, as amended.

---

[3] excess of $5,000 directly from suppliers located outside the State of California, the parties stipulated in the underlying representation proceeding that during the past calendar year Respondent purchased goods valued in excess of $50,000 directly from points outside the State of California. Whether the correct amount is $5,000 or $50,000, it is clear that Respondent meets the Board's monetary standard for a retail enterprise, that the Board's statutory jurisdiction is established, and that the Board, as Respondent admits, has jurisdiction.

2. The certification

On 12 March 1982 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 21, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 10 December 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 14 December 1982, and at all times thereafter, the Union has requested that Respondent furnish the Union with information relating to the names, rates of pay, classifications, work locations, benefits, and plans or rules for benefits of employees in the above-described unit. Since on or about 14 December 1982 Respondent has refused, and continues to date to refuse, to furnish the Union with any of the requested information. Commencing on or about 26 January 1983, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 14 December 1982, and at all times thereafter, including 26 January 1983, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and to

provide it with certain requested relevant information, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.[4]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order Respondent, upon request, to supply the Union with information that is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

---

[4] In granting the General Counsel's Motion for Summary Judgment Chairman Dotson expresses no opinion as to the Board's previous action in adopting the Hearing Officer's report which overruled the Employer's objections. Chairman Dotson was not part of the panel which considered that case and was not on the Board at that time.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Thrifty Oil Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Automotive and Allied Industry Employees of San Diego County, Teamsters Local 481, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All gasoline station attendants at the Company's gasoline stations in San Diego County, California; excluding all food store employees, office clerical employees, guards and supervisors as defined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 10 December 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing since on or about 14 December 1982 to supply information requested by the Union that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about 26 January 1983, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Thrifty Oil Company, San Diego County, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Automotive and Allied Industry Employees of San Diego County, Teamsters Local 481, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All gasoline station attendants at the Company's gasoline stations in San Diego County, California; excluding all food store employees, office clerical employees, guards and supervisors as defined in the Act, as amended.

(b) Refusing to supply the aforesaid labor organization with information necessary for collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and,

if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, supply the above-named labor organization with information necessary for collective bargaining.

(c) Post at its San Diego County, California, gasoline stations copies of the attached notice marked ''Appendix.''[5] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

---

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 5 July 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Automotive and Allied Industry Employees of San Diego County, Teamsters Local 481, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to supply the above-named Union with information necessary for collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All gasoline station attendants at the Company's gasoline stations in San Diego County, California; excluding all food store employees, office clerical employees, guards and supervisors as defined in the Act, as amended.

THRIFTY OIL COMPANY

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, City National Bank Building, 24th Floor, 606 South Olive Street, Los Angeles, California 90014, 213--688--5229.